



HAWAI'I LABOR RELATIONS BOARD  
FISCAL YEAR REPORTS TO  
THE HONORABLE DAVID IGE  
GOVERNOR OF THE STATE OF HAWAI'I  
FY 2019-2020 (July 1, 2019-June 30, 2020)

PRESENTED BY THE HAWAI'I LABOR RELATIONS BOARD

MARCUS R. OSHIRO, Chair  
SESNITA A.D. MOEPONO, Member  
J N. MUSTO, Member

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## I. INTRODUCTION

Pursuant to Hawaii Revised Statutes (HRS) § 89-5(a), the Hawai‘i Labor Relations Board (Board) presents its annual reports to the Governor describing its activities for fiscal years 2019 and 2020, reflecting the status of the composition of the Board on June 30, 2019 and June 30, 2020.<sup>1</sup>

## II. EXECUTIVE SUMMARY

### A. Brief Background of the Board

The Board is a quasi-judicial agency that oversees two areas of laws in the State of Hawai‘i: (1) collective bargaining and unfair labor practices under Chapters 89 and 377, Hawai‘i Revised Statutes (HRS); and (2) contests involving citations or orders of the Director of Labor and Industrial Relations (Director) involving occupational safety and health laws set forth in Chapter 396, HRS. The Board is attached to the State Department of Labor and Industrial Relations (DLIR) for administrative and budgetary purposes only.

In its capacity as a quasi-judicial body overseeing Chapters 89 and 377 disputes, the Board adjudicates disputes between public employers, unions, and employees involving Chapter 89 and disputes that most often arise between certain private sector employers, unions, and employees involving Chapter 377 claims.

In its capacity as a quasi-judicial body overseeing Chapter 396 contests, the Board conducts *de novo* hearings on contests of citations issued by the Director through the Hawai‘i Occupational Safety and Health Division (HIOSH) and appeals from HIOSH’s findings in discrimination complaints involving retaliation for reporting safety and health violations.

### B. “Backlog” Cases: “The Light at the End of the Tunnel Gets Brighter”

As previously reported, the Board and its staff have diligently worked to reduce the backlog of its pre-FY 2016 cases (filed in 2003- June 30, 2016) -- many of which are 10-15 years old and many even preceding the terms of the current Board members. Furthermore, many of the cases deal with personnel issues and collective bargaining contracts which arose during the early years of the conversion of “New Century” and “conversion” charter schools, and under previous State and County Executives, like Governors Linda Lingle and Neil Abercrombie, and Honolulu Mayor Mufi Hannemann, and State of Hawaii Department of Education Superintendent, Patricia Hamamoto.

This has meant that for most of the backlog cases, Board members who did not participate in the hearings, pursuant to Section 91-11, HRS, must review the entire case file and listen to the audio recordings or read the transcripts to comprehend and endorse any proposed order and findings of fact and conclusions of law. This has been time consuming, however, because many cases do not have transcripts but only audio recordings. Additionally, in many cases there have been changes in private attorneys and the deputy attorney general assigned to these cases.

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<sup>1</sup> On June 30, 2019 and 2020, the Hawaii Labor Relations Board was comprised of Board Members, Ms. Sesnita A.D. Moepono and Mr. J.N. Musto, and Mr. Marcus R. Oshiro, Chairperson.

For cases, all about 10 years old, where a current Board member had participated in the hearings, the Board member is assigned to work with our Executive Director to ascertain the case status and determine appropriate steps to dispose of the case. This would usually entail additional hearings, briefings, or orders. The other Board members are then consulted, and the matter is deliberated and considered by the entire Board before a decision or order is issued. This again taxes Board members' time and energies, as the same attention and consideration must apply to current or more recent cases.<sup>2</sup>

The Board, however, is pleased to report that at the end of the previous fiscal year (FY2019), the backlog had been reduced from 42 to 26 cases, and for the recent fiscal year (2020), the backlog has been reduced to 19 cases.

Finally, it is observed that more backlog cases may be closed in the 2021 FY, as one of the Exclusive Representatives (Union), has recently undertaken a comprehensive review of all cases in which it is a Complainant. And, so far, the Respondent (State of Hawaii, Attorney General) has not objected to or opposed the dismissal and closing of the cases. The Chart below describes the remaining backlog cases.<sup>3</sup>

### Chart of Open Backlog Cases

<u>Date/File</u>	<u>Case #</u>	<u>Case Name</u>	<u>Status</u>
1. 7/3/2003	CE-01-537a, <del>02-537a,</del> <del>03-537e, 04-</del> 537d, <del>06-537e</del>	UPW, HGEA and Kathleen Watanabe, Dir., DHRD & Linda Lingle, Governor (Charter School)	Open
2. 6/22/2004	CE-01-565a, <del>CE-02-565b,</del> <del>CE-03-565e,</del> <del>CE-04-565d</del>	UPW & HGEA and Patricia Hamamoto & BOE	Open
3. 3/12/2008	CE-05-661	HSTA v. Patricia Hamamoto, BOE, Linda Lingle, Marie Laderta	Open
4. 6/6/2008	CU-05-265	Patricia Hamamoto, BOE, Linda Lingle & Marie Laderta v. HSTA	Open
5. 6/24/2009	CE-01-710a, CE-10-710b	UPW v. Linda Lingle, Marie Laderta, Mufi Hannemann	Open

<sup>2</sup> All the backlog cases are being overseen by Board Member Sesnita Moepono who has been serving since June 5, 2011, making her the only Board Member to have participated in most of the backlog cases and the Board's most experienced member. The reduction of the backlog and closing of cases is attributed to her strong work ethic, attentiveness, and legal scholarship with the assistance of the Board's Executive Officer.

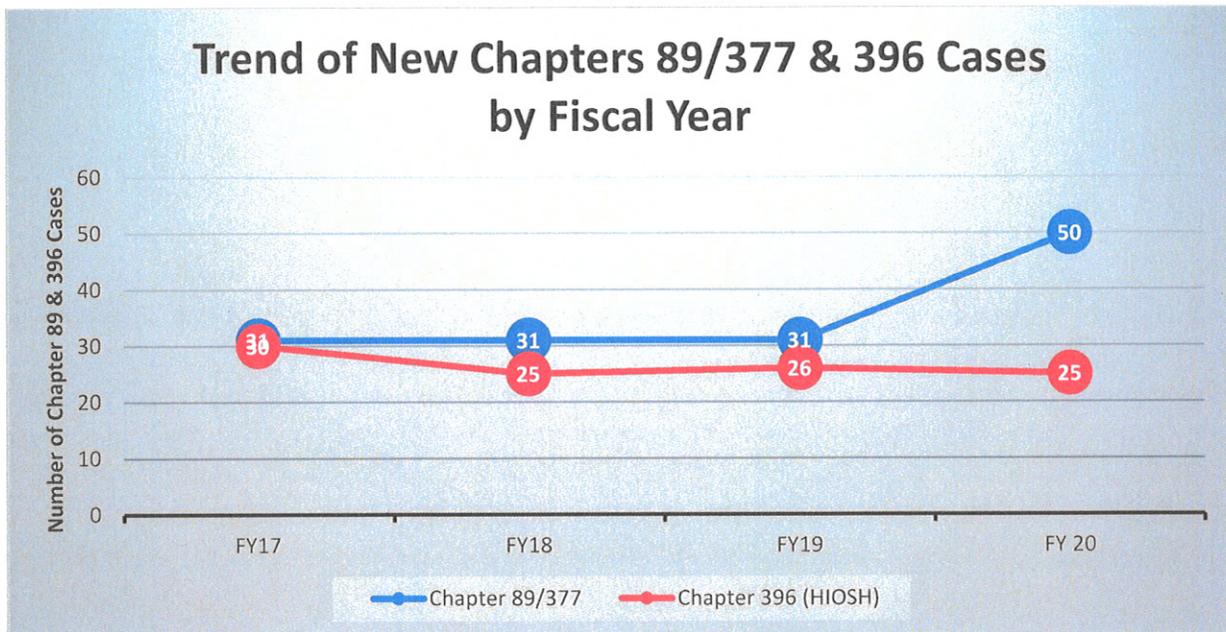
<sup>3</sup> The Board uses acronyms of "CE", "CU", and "CEE" to designate the Prohibited Practice Complaint Against Employer, Prohibited Practice Complaint Against Employee Union, and Prohibited Practice Complaint Against Employee, respectively "I" is used to designate an impasse case pursuant to HRS 89-11(c).

6.	7/31/2009	CE-01-720a, CE-10-720b	UPW v. Marie Laderta	Open
7.	11/13/2009	CE-10-737, CU-10-284	Jonathan Taum, Chad Ross, Carl L. Kahawai, Quincy G. K. Pacheco, Bradford J. Leialoha, Julieann L. Salas v. DHRD & UPW	Open
8.	1/22/2010	CE-01-747	UPW v. Aaron A. Ueno and Dr. Chiyome Fukino	Open
9.	2/19/2010	CU-04-291	Susan Siu v. HGEA	Open
10.	7/1/2010	CE-01-762a, CE-10-762b	UPW v. Diana Niles-Hansen & Annette Anderson	Open
11.	8/16/2010	CE-03-766	HGEA v. Linda Lingle, Laura Thielen, Mark Young, & Russell Tsuji	Open
12.	11/8/2010	CE-01-772	UPW v. Keith Viera, Glen Kila, Kathryn Matayoshi, Garrett Toguchi, et al.	Open
13.	4/7/2011	CU-05-303	Stephanie C. Stucky v. Wilfred Okabe, Wilbert Holck, Eric Nagamine, David Forrest, HSTA	Open
14.	11/4/2011	CE-03-787	HGEA v. Neil Abercrombie, William J. Aila, and Randy L. Awo	Open
15.	11/25/2011	DR-13-102	Henry H. Yang, MD	Open <sup>4</sup>

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<sup>4</sup> Note: Although the list contains fifteen (15) cases, for statistical purposes, there are nineteen (19) separate cases that comport with the named parties and/or collective bargaining units. For example, in UPW v. Diana Niles-Hansen & Annette Anderson, CE-01-762a and CE-10-762b, the complainant, UPW, filed the prohibited practice complaint on behalf of Bargaining Unit 1 and Unit 10 members against the same respondents. The same employer in each case, but with different bargaining units and employees.

### C. New Chapter 89/377 Cases



A review of the past four (4) Fiscal Years (“FY”), specifically, 2017, 2018, 2019, and 2020, shows that the Board receives, on average 36 new Chapter 89/377 cases each fiscal year.

The most frequent kind of Chapter 89/377 case over the last three fiscal years has been the Prohibited Practice Complaint against the Employer (CE), followed by the Prohibited Practice Complaint against the Union (CU). Although, there has been no Prohibited Practice Complaint cases filed against an Employee (CEE) in this fiscal year; there was one in 2011; UPW v. Andrew Stinnet, Hawaii Association of Corrections and Affiliates, and Friends of Hawaii Corrections; CEE-10-03.

The other category of cases under Chapter 89 pertains to situations where an impasse arises under Section 89-11, HRS. In FY 2018, there were 14 impasse cases, compared to FY 2017 where only 2 impasse cases were carried into the fiscal year, and both were disposed of the same fiscal year. In all impasse cases, the parties reached settlement themselves with little Board involvement beyond the declaration of impasse.

Finally, there are a few cases seeking a Declaratory Ruling (DR). The Board finds its authority to issue such orders under Section 89-5 and 91-8, HRS, and Section 12-42-9, Hawai‘i Administrative Rules. The Board has discretion in deciding whether to issue or refuse to issue a declaratory ruling. About two or three petitions are filed each year.<sup>5</sup>

<sup>5</sup> Petitions for declaratory rulings are a means for a party to secure an interpretation of relevant statutes, rules, and orders from the Board. Orders that come out of petitions for declaratory rulings have effect only as to the parties in the declaratory ruling proceeding. UPW v. HLRB, 131 Hawai‘i 142, 152, 315 P.3d 768, 778 (2013). Specifically, a declaratory ruling specifically looks at the “applicability” of a statute, agency rule, or order, to a particular set of facts. The legislature created this special type of procedure for situations where there are questions about how a statute, agency rule, or order would apply to particular circumstances that the agency has not yet ruled on. Kuleana Ku‘ikahi, LLC v. State, 130 Hawai‘i 347 (App. 2012). The Hawai‘i Supreme Court has stated that declaratory ruling proceedings only make sense if the applicability of relevant law is unknown. Because HRS § 91-8 allows only for declaratory rulings

In a nutshell, most of the Board’s Chapter 89/377 cases involve disputes between an Employee and his or her Employer. And, in these cases, most of the time, the Employee is represented by a Union and its attorney(s). The Employer is represented by a Deputy Attorney General or an Attorney from the City and County of Honolulu, or Hawaii Island, Maui or Kauai Corporation Counsel; except Hawaii Health Systems Corporation and University of Hawaii, which retain private counsel. There are also cases in which the Employee is not represented by the Union and proceeds on his or her own as a Self-Represented Litigant (“SRL”) (aka “*pro se*” complainant). In this case, the Employee may bring a prohibited practice charge against the Union for a violation of its breach of the duty of fair representation. But, whether these cases have an attorney, or involve a self-represented litigant, they are not “cookie cutter” cases, and each case is as unique as the parties and facts involved. Consequently, the Board and its staff spends more time processing these cases through the formal hearing process, and similar pre-hearing and post-hearing procedures as are customarily used in most civil proceedings in the Hawai’i District or Circuit Courts.

Additionally, the Board also adjudicates unfair labor practices complaints under Chapter 377, HRS, and in the past three fiscal years, four cases were filed, with one proceeding to a hearing on the merits in July 2019.<sup>6</sup> That consolidated case involved an agricultural corporation on the Neighbor Island and local union representing agricultural workers and arose from twelve specific allegations arising from two separate contacts, regarding two separate farms between the employer and multiple worker units of the same union. The hearing on the merits was held in Honolulu over three days, and parties flew in their respective witnesses. The case has been briefed and submitted for decision and order.

Finally, the Board’s hearings under Chapter 89/377 are open to the public and reasonable accommodations are made for persons seeking access. The Board also provides language interpretation and translation services for party litigants and has held hearings on the Neighbor Islands to accommodate Neighbor Island litigants. Both complainants and respondents have expressed appreciation for this Board practice. Recent COVID-19 restrictions, however, will have an effect on this practice and at present no Neighbor Island hearings are foreseen.

#### **D. Chapter 396 Hawaii Occupational Safety and Health Division Cases (HIOSH)**

As reported in our previous report, FY 2017-2018, and covering FYs 2016, 2017, and 2018, most HIOSH cases pursuant to Chapter 396, HRS, are closed within twelve (12) months of filing.

A review of the past four (4) Fiscal Years (“FY”) 2017, 2018, 2019, and 2020, shows that the Board received on average 26 cases a year but in the last two (2) FYs, there was a reduction in the number of Chapter 396, HRS, cases, from a high of 55 cases in FY 2018, to a low of 25 cases filed in FY 2020.

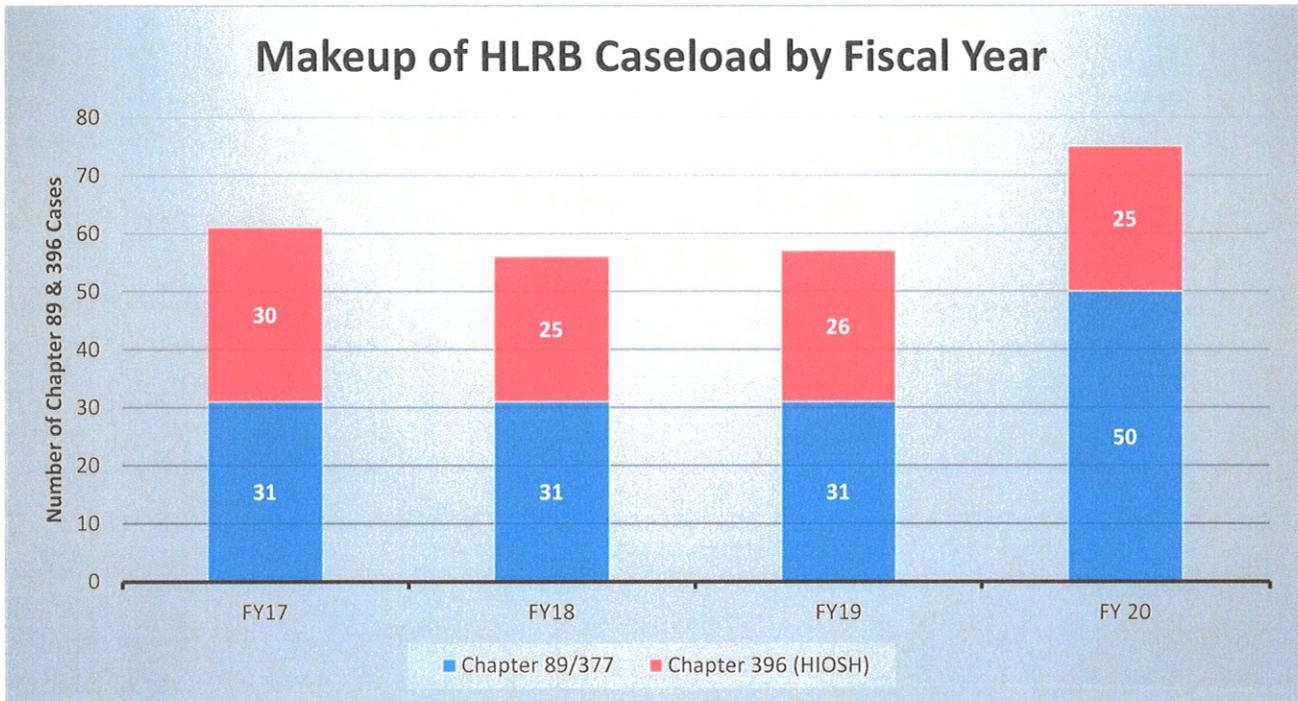
This may reflect the construction boom and economic expansion during the years 2015-2018 and the subsequent increase in construction projects and the expected increase in HIOSH citations and cases.

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that deal with questions of applicability, an agency such as this Board, has no discretion to issue a declaratory ruling that does not deal with a question of applicability. Citizens Against Reckless Development v. Zoning Board of Appeals, 114 Hawai’i 184 (2007). The Board’s administrative rules include a non-exhaustive list as to what types of declaratory ruling petitions the Board may refuse to issue declaratory rulings on. This list is found in Hawai’i Administrative Rules 12-42-9(f).

<sup>6</sup> In FY 2019, three (3) HRS 377 cases were filed but two (2) were withdrawn before a hearing. In FY 2018, one case was filed, but dismissed sua sponte by the Board for lack of subject matter jurisdiction. And, in FY 2016, one case was filed, but withdrawn before a hearing. There were no HRS 377 cases filed in FY 2020.

It could also reflect the increased monetary penalties that HIOSH imposes upon the violators and resulting deterrent effect, or better business compliance with the rules and regulations, or the increased enforcement and prosecution by HIOSH. Local economist have opined that the construction boom may have reached a plateau in FY 2019 and that could explain the reduction in number of cases. But, again, it could also be a result of stronger enforcement and better compliance with the established rules and regulations. In any case, as we enter the new fiscal year, six months into the COVID-19 Global Pandemic, our historical references may shed little insight on how the HIOSH laws are enforced and whether more contested cases (appeals) will be filed. At the close of the fiscal year, 25 cases have been filed.



The following chart shows the present trend for 2018, and 2019 HIOSH cases

<u>Year Filed</u>	<u># of Cases</u>	<u>Closed</u>	<u>Carried Over</u>
2018	25	25	0
2019	26	22	4
2020 <sup>7</sup>	25	5	

However, due to the current concerns regarding COVID-19, the Governor issued an Emergency Proclamation on March 4, 2020, and a Supplementary Emergency Proclamation on March 16, 2020. These proclamations, among other things, gave agencies the ability to conduct certain hearings by telephone or video conference without the physical presence of the parties at the same location, and suspended certain rules, statutory requirements, and administrative hearing procedures as needed to

<sup>7</sup> These 25 cases as of June 30, 2020 but the Board expects the number of cases to increase as on average that Board receives an average of 41 HIOSH cases a year. The advent of the COVID-19 Global Pandemic, however, is a new variable that may affect the filings and cases.

deal with the emergency situation brought on by COVID-19. Furthermore, on March 17, 2020, the Governor ordered all non-essential state workers to work remotely.

Similarly, on March 22, 2020, the Mayor of the City and County of Honolulu issued an Emergency Order requiring, among other things, that all residents of the City and County of Honolulu stay at their place of residence, except to perform “Essential Activities,” “Essential Governmental Functions,” or to operate “Essential Businesses.” The Hawai‘i Labor Relations Board (Board) is located within the City and County of Honolulu.

Both, the Governor’s Proclamations and Mayor’s Orders have had a significant impact upon the Board. Pursuant to the Governor’s First Executive Order, the Chair ordered the office to be closed and the staff to work from home.<sup>8</sup> The initial “Stay at Home/Work from Home” orders required both substantive and procedural changes to the operations of the Board and necessitated significant upgrades to computer software and the re-setting of physical layout of the Board’s Hearing Room. The Board, however, has not allowed these restrictions to impair its ability to function and stay true to its mission. To the contrary, the Board has quickly reacted to the changing conditions and created a process to afford parties adequate time to foster settlement considerations while maintaining firm Board control on the prosecution and disposition of the cases. To this end, the Board has shifted its attention to those cases that are deemed a “priority” by allowing any party to request the Board to bring a case to hearing. Accordingly, both in-person and remote hearings are now freely provided to accommodate the needs of the parties and their level of technological abilities.<sup>9</sup>

At present, the Board has not received any request to classify any HIOSH case as a “priority” but on its own has set several discrimination or whistleblower cases for status conferences.<sup>10</sup> It is too soon to predict, however, whether current HIOSH cases will be closed within the year filed because of COVID-

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<sup>8</sup> The HLRB chairperson directed all employees to work remotely effective March 18, 2020 and became the designated essential personnel to physically work in the office during the initial “lock-down” of State offices. From that date forward, Staff was given authorization to work remotely using government issued laptops. When, the DLIR building was closed to the public on March 23, 2020, Staff was informed that the remote working conditions and authorizations would continue for the indeterminate future.

<sup>9</sup> Board Order No. 3595, Emergency Order Regarding All Proceedings Before the Hawaii Labor Relations Board, filed March 25, 2020, ordered that except for proceedings deemed a “Priority” by the Board, in its discretion, all hearings shall be postponed on or after April 1, 2020, including but not limited to status conferences, prehearing conferences, pretrial conferences, motions hearings, hearings on the merits, and *de novo* hearings, shall be postponed and rescheduled to dates to be determined as the Board’s schedules permits.

Board Order No. 3605, Second Emergency Order Regarding All Proceedings Before the Hawaii Labor Relations Board, filed May 19, 2020, ordered that all filings in all cases before the Board during the emergency period must be made electronically through the Board’s filing service *FileandServeXpress (FSX)*, unless otherwise ordered by the Board. (The Board has used *FSX* since 2014 to create a “paperless” filing system and serving of all pleadings electronically).

Board Order No. 3647, Third Emergency Order Regarding All Proceedings Before the Hawaii Labor Relations Board, filed September 3, 2020, ordered that all hearings scheduled by the Board on or after September 3, 2020, will be held remotely using the *Zoom* platform, while encouraging any party without Internet access or any concerns to contact the Board. (The Board has responded to all request and made reasonable accommodations in all instances).

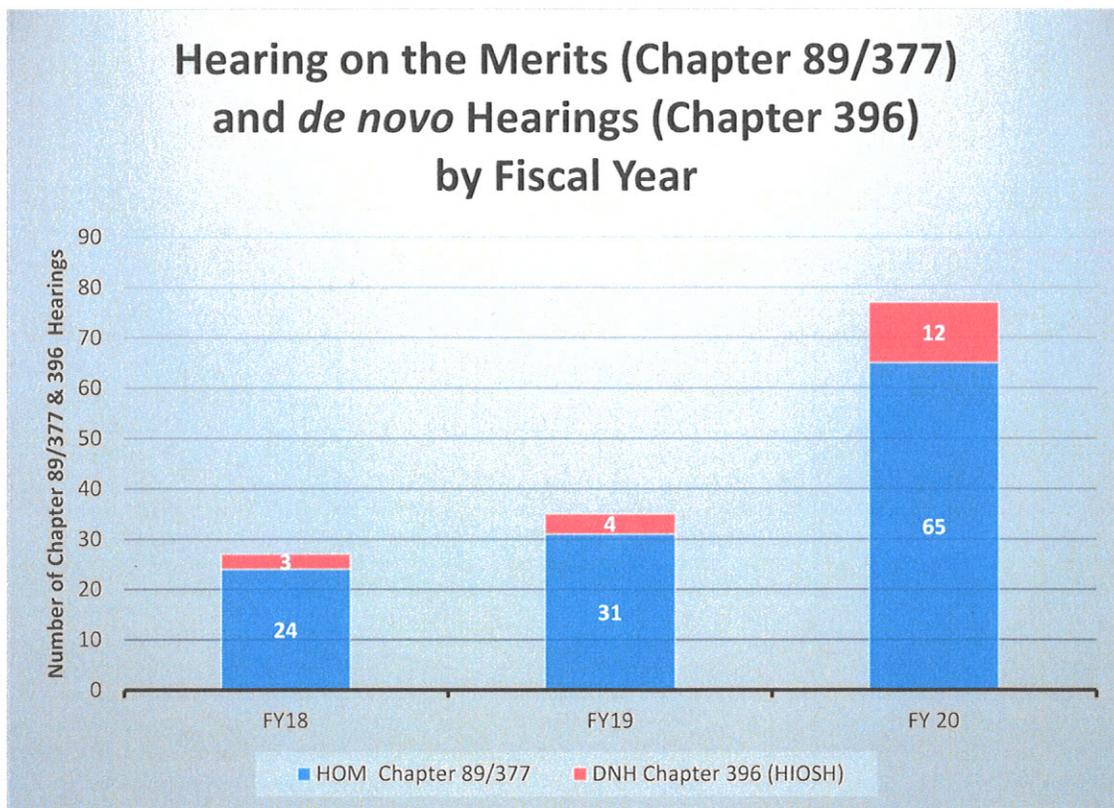
<sup>10</sup> In contrast, to the HIOSH cases, the exclusive representatives (unions) in several Chapters 89/377 cases have been actively requesting hearings and designation of cases, as a “priority”, either as Complainant or Respondent. The Board has granted each request and set the cases for a hearing on the merits or for status conference.

19. But the Board will continue to promote timely prosecution of the cases and final disposition. This is especially the case for those cases involving claims of discrimination or whistleblower and those brought by self-represented litigants (SRLs).

**E. Chapter 89/377 Cases: Pretrials, Motions and Hearings on the Merits**

Chapters 89/377 cases are similar in many respects to civil cases filed in the circuit courts. Much of the processing of these cases hinge upon the prosecution of the case by the plaintiff or defendant. The court serves in many instances as the “referee” or “facilitator” of these cases, and about 90% of all civil cases do not proceed to trial and court adjudication. The same holds true for the Board and the parties. Both the complainant and respondent have some say in whether a case goes to hearing on the merits or is continued for purposes of settlement. Furthermore, the Board adheres to the legislative public policy of promoting harmonious and cooperative relations among the parties, and in many instances, the provision of additional time to the parties has resulted in resolutions benefiting both of the litigants, saving legal expenses, and most importantly, establishing workable processes to avoid future contractual disagreements.

The chart below shows the number of days the Board held hearings on the merit and *de novo* hearings by Fiscal year. <sup>11</sup>



<sup>11</sup> In FY 2019-2020, a Chapter 89/377 case with parties, all from Oahu, involving eight complainants, two respondents, three attorneys, and six procedural and substantive motions, was concluded after 17 days of hearings. In another 89/377 case, covering three fiscal years, 2018-2020, involving Neighbor Island employees, and Oahu based employer, and public union, the Board held a total of 26 hearings on Oahu and Hawaii island. Finally, a HIOSH case involving an Oahu employer and former employee, took 14 days to complete the *de novo* trial.

Over the past three fiscal years, the Board has conducted, on average, 46 days of hearing on the merits (including *de novo* hearings). This does not, however, include multiple status conferences, pre-trial hearings, motion hearings and other non-substantive procedural hearings.<sup>12</sup> Still, during these past years, the Board recorded more hearing time on Chapters 89/377 and 396 cases than in recent memory.

For instance, In Jonathan Taum v. United Public Workers, AFSCME, Local 646, AFL-CIO and Department of Public Safety, State of Hawaii, Case Nos. 17-CU-10-357, 17-CE-906, the Board, over 3 years, received testimony from 10 witnesses, processed hundreds of exhibits, and held multiple hearings in Honolulu and in Hilo, over the 31 days of the case. The complainant was represented by private counsel, the union by private counsel, and the State of Hawaii, by several deputy attorney generals.<sup>13</sup>

Similarly, a record of hearings days for a HIOSH case was established in Henkels & McCoy, Inc., Appellant, and Director, Department of Labor and Industrial Relations, State of Hawaii, DLIR-Appellee, and Wendell Keith Olive, Jr.-Appellee, Case No. OSH 2019-05. This HIOSH case, under Chapter 396, HRS, involved 7 witnesses, hundreds of exhibits, and involved two attorneys, and one self-represented litigant, was completed after 10 days of hearings.

In conclusion, as described above, and in Section D, although the past three fiscal years show an average of 46 hearings days, the Board cannot predict whether the trend will continue or take another track. More important, however, is that the Board has already made substantial modifications to its hearings process and is currently operating with a “new normal” in-person, remote hearing and hybrid hearing processes. Sections F1, F2, and F3, below describes more fully the actions of the Board.

## **F. Impact of COVID-19 Upon Chapters 396 and 89/377 Cases: What We have Learned**

As discussed above, “Historically, Most Hawaii Occupational And Health Chapter 396 Cases (HIOSH) are Closed Within the Year Filed, But COVID-19 May Change That Expectation”, Section 2, the impact the Covid-19 Global Pandemic will have upon the Chapters 89 and 377 cases are uncertain and subject to forces and influences outside the legal authority of the Board. However, Board Order 3595, has provided the parties clear and firm assurances of the cases statuses that all rights and defenses are preserved subject to dispositive motions, hearing on the merits, or other proceedings to adjudicate the case. Furthermore, the Board has the discretion to postpone the 40-day hearing requirement.<sup>14</sup>

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<sup>12</sup>It cannot be overlooked that while these hearings may not be “on the merits” or *de novo*, most still require formal written notices and orders memorializing parties’ agreements, Board decisions, evidentiary and factual stipulations, deadlines, and other substantive procedural and legal directives arising from the hearings. The Board this year has begun to track and measure its issuance of all notices and orders filed under Chapters 89, 377 and 396. In FY 20, the Board filed over 300 orders and over 100 notices. The Board’s Executive Officer, Hearings Officer, Researcher, Hearings and Case Management Specialist, and Secretary are credited and recognized for the drafting and timely filing of these legal documents.

<sup>13</sup> Board Member J.N. Musto presided over the case from beginning to end and is credited in deftly managing the hearings, various motions, and the contested procedural issues that arose in the 31 days of hearings. Over three years, his firm demeanor, tactfulness, wry sense of humor, and mastery of the Board’s procedures kept the Board on its mission and brought this case to a conclusion for all parties.

<sup>14</sup> On March 29, 2020, the Governor in Executive Order No. 20-02, gave the Board the sole discretion, to the extent necessary, to waive the requirement of holding a hearing on a complaint not more than 40 days after the filing of the complaint under HRS Section 377-9. This provision has been renewed in all subsequent Executive Orders, in accordance with the March 4, 2020 Proclamation, and all Supplemental Proclamations.

Again, Board Order 3595 has been in place for about four months, and several litigants have petitioned the Board to declare a case a “Priority” case and all requests have been granted and the cases processed in the normal course with status conferences, pre-trials, motion hearings, and hearing on the merits. So, the Board has quickly and effectively made decisions to address concerns regarding the status of cases and relieved all parties of further injury or stress due to the COVID-19 Pandemic and Governor’s Emergency Proclamation of March 5, 2020, and Supplementary Emergency Proclamation of March 16, 2020.

In addition to providing firm assurances to the parties of preserving all pending claims and defense during this period of transition, the Board has invested in upgrading its hearing process for both in-person and remote hearing proceedings.

### **1. In-Person Hearings: Safety Standards to Protect the Parties, Staff, and Board**

Following the Centers for Disease Control (CDC), and State of Hawaii Department of Health (SDOH) advisories and recommendations, the Board has retrofitted its Hearings Room in its Punchbowl Street Office to accommodate in-person hearings where all persons are six feet apart and separated by a Plexiglass screen. Additionally, there are designated areas set aside for the party or their representatives, attorneys, and witnesses. Likewise, the Board Members and court reporter are also provided with Plexiglass screen protection.

The Board has also instituted a formal check-in process whereby any person seeking access to the Hearing Room must submit to a mandatory questionnaire and non-touch thermal temperature check. There are four (4) questions asked of each party seeking admission to the Hearing Room and an affirmative response to any question regarding travel out of Hawaii, cold or flu symptoms, or test or contact for COVID-19, would result in the hearing being rescheduled. The form requires the person to print and sign their name, date, and list a phone number. It also informs the person that it may be used for tracking purposes. Finally, a “Visitor’s Badge” is issued to the party with instructions that it be worn at all times during their time in the Department of Labor and Industrial Relations Building (Building). Arrangements have been made with the security detail at the entrance to the Building so that it may be used as a pass during the duration of the hearing but must be returned at the end of each day. A hearing being continued or postponed to another day requires that the parties complete a new questionnaire and submit to a non-touch thermal temperature check before entrance is granted.

After the hearing is completed for the day, the chairperson and staff wipe down and clean all chairs, tabletops, screens, microphones, with disinfecting wipes and/or alcohol. A separate trash can is emptied of any trash (tissue, paper, etc.) and sprayed down with alcohol.

### **2. Remote-Hearings: Covid-19 Restrictions and Neighbor Island Cases**

During the last two fiscal years, the Board has expanded its availability to Neighbor Island litigants and routinely traveled to the islands of Hawaii, Maui, and Kauai. The parties have appreciated the Board travelling and accommodating the Neighbor islanders as most of the witnesses were not in Honolulu, and for self-represented litigants, having the hearing in their own community reduced inter-island travel costs, ground expenses, and witness fees. COVID-19, however, has brought this practice to an abrupt halt. Following the guidance provided by the CDC, and SOH, the Board has cancelled any plans to hold proceedings on the Neighbor Islands at this time.

The Board has instead been offering and providing remote audio services and most recently, began using *Zoom* to conduct several motion hearings and even a portion of a hearing on the merits. Remote parties are responsible for insuring they have access to the requisite equipment and software and the Board, through its staff provides limited “testing” of the parties’ systems prior to the hearing. The Board has also upgraded its recording system to record and preserve the hearing proceedings with a system that is “off-line” and independently operated without Internet connection.

### **3. Hybrid-Hearings: Simultaneous In-Person and Remote Attendance**

There have been and the Board is prepared to accommodate hybrid hearings in which either a representative or witness is unable to attend or for COVID-19 medical and health reasons should not attend. The Board is properly set-up to permit simultaneously and remote appearances of representatives and witnesses. As such, the Board is able to provide reasonable accommodation to the parties and thereby facilitate the timely prosecution of the cases and judicious deployment of its resources and time, while abiding by the current CDC and SDOH COVID-19 Directives and Guidelines.

Specifically, and to accommodate remote participation of representatives and witnesses, the Board uses the *freeconferencecall* or *Zoom* platforms, learning that both technologies are easy to set-up and use for both Board and Neighbor Island parties. Recently, the Board held a hearing where the Neighbor Island (Kauai) representative and witnesses were in two different locations while the opposing party was in-person with a court reporter before the Board in the Honolulu Hearing Room. All parties found the arrangement satisfactory and afforded the customary examination and cross examination trial procedures while addressing the obvious and serious COVID-19 safety and health concerns. In short, the Board is adequately prepared to accommodate the needs of both in-person and remote participation by the parties, while providing a safe working environment for its members, staff, visitors, and participants.

Finally, while it was not intended, the use of the *Zoom* technology enables a greater number of the public to virtually attend and observe the Board’s proceedings than in the past with in-person seating. For example, the largest attendance in recent memory occurred several years ago when 14 citizens, including media, observed a hearing over the course of several days. In contrast, a recent hearing broadcast on *Zoom* had an attendance of about 20 citizens.

### **III. OVERVIEW AND HISTORY OF THE BOARD**

The mission of the Board is to enforce and protect the rights of employees and unions to organize and bargain collectively, in balance with the employer’s rights to manage operations as provided by HRS Chapters 89 and 377, by fairly and efficiently resolving labor disputes brought before it. The Board is committed to promoting the harmonious and cooperative relations between the parties.

The Board has jurisdiction over public employers, i.e., the State of Hawai‘i and the counties, the Judiciary, the Department of Education, including the public charter schools, the University of Hawai‘i system, and the Hawai‘i Health Systems Corporation. In the private sector, the Board has jurisdiction over employees, employers, and unions who are not subject to the jurisdiction of the National Labor Relations Board. Historically this has included agricultural employees and employers.

The Board conducts hearings pursuant to HRS Chapters 89 and 377 to adjudicate complaints filed by employees, unions, and employers alleging prohibited or unfair labor practices. These cases typically involve an employer or union’s failure to bargain in good faith, an employer or union’s interference with

an employee's right to participate in or refrain from bargaining activities, or a union's failure to fairly represent its members in the negotiation of agreements or the pursuit of grievances. The Board also conducts union representation elections, supervises the impasse procedures in public employment, and issues declaratory rulings, which clarify the applicability of governing statutes and its rules.

In 2002, the Board also acquired jurisdiction to conduct *de novo* hearings on contests of citations issued by the Director of the DLIR through HIOSH under HRS Chapter 396 or appeals of HIOSH determinations involving other violations of HRS Chapter 396, except where HIOSH's rules require a prior formal hearing at the HIOSH level and the proceedings are required to be transcribed. In those cases, the Board's case review is confined to the record only. The Board's mission pursuant to HRS Chapter 396 is to ensure the right of workers to a safe and healthful work environment and encourage employer and employee efforts to reduce injury and illness arising out of employment.

### **A. Governing Constitutional Provisions and History of the Board**

Private employees in the State of Hawai'i have a constitutional right to organize. Article XIII, Section 1 of the State Constitution, provides that, "Persons in private employment shall have the right to organize for the purpose of collective bargaining." The Hawai'i Employment Relations Act (HERA) was enacted in 1945 and codified as HRS Chapter 377 to permit employees who are not subject to the Railway Labor Act or the National Labor Relations Act to participate in collective bargaining. The Hawai'i Employment Relations Board (HERB) was created to administer the provisions of the HERA.

Similarly, in 1968, the State Constitution was amended to afford public employees in the State of Hawai'i the right to organize for the purpose of collective bargaining. Article XIII, Section 2 of the State Constitution, provides that, "Persons in public employment shall have the right to organize for the purpose of collective bargaining as provided by law."

In 1970, the Legislature enacted Act 171, Session Laws of Hawai'i, which was subsequently codified as HRS Chapter 89, Collective Bargaining in Public Employment, to encourage joint decision-making in administering government. The Act created the Hawai'i Public Employment Relations Board (HPERB) to administer the provisions of HRS Chapter 89. In 1985, the Legislature abolished HERB, transferred its functions to HPERB, and renamed it the Hawai'i Labor Relations Board, effective January 1, 1986, to administer the provisions of both HRS Chapters 89 and 377.

Thereafter, in 2002, the Legislature enacted Act 104, Session Laws of Hawai'i, which empowered the Board to conduct *de novo* hearings in reviewing contests of citations or orders of the Director of Labor and Industrial Relations involving occupational health and safety pursuant to HRS § 396-11, except as provided in HRS § 396-11(h) where the Board's review is confined to the record only.

### **B. Board Functions**

The Board is an agency within the DLIR for administrative and budgetary purposes only. The Board exercises quasi-judicial powers with jurisdiction over disputes pertaining to collective bargaining in the public sector arising under HRS Chapter 89 and in the private sector under HRS Chapter 377.<sup>15</sup> Accordingly, the primary duties of its members are to hear and adjudicate contested cases involving

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<sup>15</sup> Pursuant to HRS § 92-6(2)(A), the Board is exempt from Part I of Chapter 92, HRS, when performing "adjudicatory functions."

prohibited or unfair labor practice complaints and to render declaratory rulings on questions submitted. These cases typically involve an employer or union's failure to bargain in good faith, an employer or union's interference with an employee's right to participate in or refrain from bargaining activities, or a union's failure to fairly represent its members in the negotiation of agreements or the pursuit of grievances. The Board also conducts union representation elections, supervises the impasse procedures in public employment, and issues declaratory rulings to clarify the applicability of governing statutes and its rules. In addition, the Board also resolves disputes involving bargaining unit designations and determines the appropriateness of dues refunds for nonmembers.

In the public sector, the Board has jurisdiction over state and county employees, judiciary employees, public school teachers, faculty of the University of Hawai'i and community college system, employees of the Hawai'i Health Systems Corporation, and charter school employees.

In the private sector, the Board is statutorily authorized to conduct representation elections and resolve unfair labor practice complaints. The Board has jurisdiction over private employees and employers who are not subject to the jurisdiction of the National Labor Relations Board. Historically, this includes primarily agricultural employees, employers, and their unions. Typically, the employees are members of unions or are involved with organizing activities.

In addition, the Board adjudicates contests and appeals of decisions rendered by the DLIR Director, through HIOSH, under HRS Chapter 396. These cases are typically employer contests of citations and penalties issued and appeals in discrimination cases involving retaliation against employees for reporting safety and health violations.

### **C. FY 2020 Board Members**

The Board is composed of three members: one member is representative of management, one member is representative of labor, and the third member, the Chair, is representative of the public. Each member is appointed by the governor and confirmed by the Senate. The full term of appointment for Board members is six years. Because cumulative experience and continuity in office are essential to the proper administration of HRS Chapter 89, the two-term appointment limit in HRS § 26-34 is not applicable, and members can continue in office as long as efficiency is demonstrated. For FY 2020, the Board was composed of the following members:

**MARCUS R. OSHIRO**, Chair, was appointed to the Board on October 25, 2017, and his initial term ended on June 30, 2018. He was also appointed concurrently to another term effective July 1, 2018 through June 30, 2024. Mr. Oshiro's annual salary as of June 30, 2018 was \$134,688. After graduating from Leilehua High School on O'ahu, Mr. Oshiro received his Bachelor of Arts in Political Science from the University of Hawai'i at Mānoa. He attended the Willamette University College of Law from 1985-1988 and graduated with a J.D. and earned a Certificate in Dispute Resolution in 1988. He was admitted to the Hawai'i State Bar in 1988 and is licensed to practice in the Hawai'i State Courts, as well as the U.S. District Court (Hawai'i) and the 9<sup>th</sup> Circuit Court of Appeals. During his professional career, he served as a Deputy Prosecuting Attorney for the City and County of Honolulu and Consumer Law Attorney at the Legal Aid Society of Hawai'i. He has served in various leadership and committee chairmanships representing the people of Wahiawa, Whitmore Village, and Launani Valley in the State House of Representatives from 1994 through 2017.

**SESNITA A.D. MOEPONO**, Member, representative of management, was appointed and confirmed for a six-year term beginning on July 1, 2011 and ending on June 30, 2017. Ms. Moepono was then re-appointed and confirmed for a six-year term, ending on June 30, 2023. As of June 30, 2018, Ms. Moepono's annual salary was \$127,956. Ms. Moepono graduated from Punahou School, University of Hawai'i at Mānoa with a Bachelor of Arts, and the William S. Richardson School of Law in 1986 with a J.D. She was admitted to the Hawai'i State Bar Association in 1987. Ms. Moepono was in private practice from 1998-2011. From 1994-1997, she served as the Deputy Administrator of Operations, Office of Hawaiian Affairs, and was responsible for the administrative functions, i.e. fiscal, personnel, public information, cultural, legislative, and public information. She has worked in the Legislature as a budget analyst for the Senate Ways and Means Committee and legislative researcher for the Senate Majority Research Office and the Committees on Judiciary, Labor, Transportation, and Health. Ms. Moepono served as the Chair of the Liliha Neighborhood Board 2003-2007, served as Vice Chair during her tenure on the Honolulu Planning Commission 1994-2007, and a member of the Downtown Business Association, Kupuna Caucus, the Honolulu Committee on Aging, the Juvenile Justice SAC, and the Lanakila Multi-Purpose Committee, among others.

**JN. MUSTO**, Member, representative of labor, was appointed and confirmed to a six-year term beginning on July 1, 2016, and end on June 30, 2022. Dr. Musto's annual salary as of June 30, 2018 was \$127,956. Dr. Musto graduated with a Bachelor of Science in Biology from Hillsdale College in 1963. He attended the University of Michigan from 1968 to 1973, receiving a Master's degree and Ph.D. from the Rackham Graduate School in a combined curriculum of education, law, and business. His dissertation explored the potential impact of Title VII of the 1964 Civil Rights Act on affirmative action hiring programs in selected Michigan public school districts. He has taught in public secondary schools and universities. For more than 35 years, Dr. Musto served as the Executive Director and Chief Negotiator for the University of Hawai'i Professional Assembly. He has been appointed to serve on impasse resolution interest arbitration panels in both Hawai'i and other states. Dr. Musto was appointed as one of Hawai'i's Commissioners to the Education Commission of the States and was a member of the Research Corporation of the University of Hawai'i Board of Directors. He also participated in the early formation of the Neighborhood Justice Center of Honolulu, serving as both a mediator and its president.

#### **D. FY 2020 Board Staff**

Pursuant to HRS § 89-5(a), the Board may appoint the members of its staff. The Board's secretary and legal clerk are in the civil service system and excluded from collective bargaining. Other staff members are exempt from civil service and excluded from collective bargaining. For FY 2020, the Board's staff was composed of the following:

**MIDORI K. HIRAI**, Hearings Officer. Ms. Hirai serves as legal counsel to the Board and performs such legal duties as may be delegated by the Board. Her legal duties primarily include research, drafting, and editing Board decisions and orders. Her annual salary as of June 30, 2020 as \$80,000.4. Ms. Hirai previously worked in state government as a legislative aide and joined the Board as a Staff Attorney in October 2018 after spending time in private practice. Ms. Hirai graduated from Punahou School and University of Hawai'i at Mānoa with a Bachelor of Arts in English with High Honors and a Professional Writing Certificate. She received a Juris Doctorate from the University of San Francisco, School of Law, San Francisco, CA and has been a member of the Hawai'i State Bar Association since 2016.

**JOYCE K. MATSUMORI-HOSHIJO**, Staff Attorney. Ms. Matsumori-Hoshijo oversees the process for the drafting, public comment, and adoption of new HLRB administrative rules. She also performs such

other assignments as directed by the Chair and Board members. Her annual salary as of June 30, 2020, was \$89,004. Ms. Matsumori-Hoshijo graduated from the University of California at Berkeley with a Bachelor of Arts in Psychology. She received a Juris Doctorate from Hastings College of the Law in San Francisco, California, and has been a member of the Hawai'i State Bar Association since 1984. Ms. Matsumori-Hoshijo served as a law clerk in the Motions Division of the First Circuit Court and subsequently worked with the Office of the Public Defender, litigating bench and jury trials, drafting appellate briefs and presenting oral argument before the Hawai'i Supreme Court and the Intermediate Court of Appeals. She taught Appellate Advocacy for six semesters as an Adjunct Instructor at the University of Hawai'i, Richardson School of Law. After leaving the Office of the Public Defender in 2005, Ms. Matsumori-Hoshijo worked in private practice, specializing in appellate litigation. She served as Grand Jury Counsel for the First Circuit Court in 2007 and 2009. From 2011-2019, she served on the Hawai'i Paroling Authority as a Board member where she adjudicated hearings and assisted in drafting and revising administrative rules and Board manuals.

**LINDA K. GOTO**, Executive Officer. Ms. Goto serves as legal counsel to the Board and performs such legal duties as may be delegated by the Board. Her legal duties primarily include research, drafting, and editing Board decisions and orders. Her annual salary as of June 30, 2018 was \$113,364. Ms. Goto graduated from Punahou School and Mount Holyoke College in South Hadley, Massachusetts with a Bachelor of Arts in Psychology. She received a Juris Doctorate from the Columbus School of Law, Catholic University of America, Washington, D.C. and has been a member of the Hawai'i State Bar Association since 1978. Ms. Goto served briefly as a law clerk in the Office of the Administrative Director of the Family Court for the First Circuit after her graduation from law school. She then joined the Board for her first term as the Hearings Officer in 1978. In 1981, Ms. Goto left the Board to work in private practice, primarily in the area of civil litigation. After several years in private practice, Ms. Goto returned to work in state government as a legal researcher with the Legislative Reference Bureau, Hawai'i State Legislature, and an administrative rules drafter with the State Department of Taxation. In 1993, she became a solo practitioner performing legal research and writing on a contract basis, primarily in the area of private sector labor and employment law, until returning to the Board for a second term as the Hearings Officer in 2014. Ms. Goto served in a temporary assignment as the Executive Officer. In that capacity, Ms. Goto performed such legal and administrative duties as may be delegated by the Board. Her administrative duties included supervising the other staff members; drafting and editing Board publications and decisions; and responding to inquiries from the public.

**NORA A. EBATA**, Secretary IV; SR 18M. Ms. Ebata provides clerical services for the Chair and Board members. Her annual salary as of June 30, 2018 was \$65,460. She also serves as the office manager, supervises the Board's clerical staff and is responsible for fiscal and personnel recordkeeping, including purchasing and travel for the Board. Ms. Ebata types from a draft and finalizes Board decisions, orders, notices, and other Board publications; proofs and finalizes court documents; and responds to public inquiries. She has been with the Board for over 48 years.

**MILTON Y. HIRATA**, Hearings and Case Management Specialist. His annual salary as of June 30, 2020 was \$50,004. Mr. Hirata effectively serves as the Board's judicial Court Clerk, which has allowed the Board to expand the number of hearings it is able to hold, nearly doubling the number of days of hearings on the merits since the creation of the position. In that role, Mr. Hirata is responsible for the administration of the Board's hearings. He maintains the audio and/or video recordings of the hearings, which serves as the official record of the proceedings. Mr. Hirata also takes the official Board proceeding notes, which are taken contemporaneously with all proceedings, including status conferences, pre-hearing conferences, motion hearings, and hearings on the merits.

In preparation for all proceedings, Mr. Hirata serves as the primary point-of-contact with the parties to determine access needs, compliance with filing deadlines and requirements, including that the parties have properly bates-stamped all exhibits, and properly completed forms requesting subpoenas, and filed any service documents. Prior to pretrial conferences, Mr. Hirata is responsible for reviewing the pretrial statements submitted by the parties and for checking the witness and exhibit lists offered by the parties for any duplicative exhibits or witnesses who may be called by both parties. During hearings, Mr. Hirata is responsible for maintaining the list of exhibits that are withdrawn, offered, rejected, or entered into the record. Additionally, Mr. Hirata is responsible for monitoring the observers of hearings, both in person and remotely, to ensure compliance with the Witness Exclusion Rule. As the operator of the Board's hearing technology, Mr. Hirata publishes exhibits on the Board Hearing Room's display monitor for the Board and parties to reference as they are used in testimony, as well as adjusting and monitoring video and sound projections and levels.

Mr. Hirata's responsibilities also include operating and maintaining the Board's electronic broadcasting and recording systems, both in-house and Internet based. As the staff member with primary technological responsibilities, Mr. Hirata is the only staff member fully trained to operate the *SoniClear* Court Recorder 9 Suite, including both hardware and software components. In addition to the in-house *SoniClear* system, Mr. Hirata maintains the Board's *FreeConferenceCall* account to allow the Board to hold remote hearings when Internet access or equipment may not allow for video recordings. Additionally, during the COVID-19 pandemic, Mr. Hirata has been tasked with ensuring the Board's ability to hold remote hearings via *Zoom*. Additionally, Mr. Hirata provides back-up support for the Researcher and can manage and maintain the Board System/Docket, Decision and Order log, and the Board's *FileandServeXpress* system.

Mr. Hirata graduated from the University of Hawai'i at Mānoa with a Bachelor of Arts degree in Political Science. From 1980 to 2005, Mr. Hirata founded and managed several communications agencies. From 2005 to 2013, Mr. Hirata served as the regional director of communications for the American Cancer Society, Hawai'i Pacific Division.

**KEITH D. KARDASH**, Researcher. Mr. Kardash performs a variety of duties for the Board as a researcher. His primary responsibilities involve maintaining the Board's official electronic case records and the *FileandServeXpress* (FSX) electronic filing system. His annual salary as of June 30, 2020 was \$55,008. The FSX system provides free electronic filing and electronic service of documents for parties, including self-represented litigants, Unions, law firms, Employers, and the Attorney General's office. Mr. Kardash is also responsible for maintaining the Board's digital calendar.

Mr. Kardash reviews and finalizes all Board filings, including Board Notices and Orders, under the direction of the Executive Officer and the Hearings Officer and forwards all required documents to the Board for execution via the eSign system. After receiving the completed documents, Mr. Kardash uploads the Board documents to the FSX system. Mr. Kardash is also responsible for preparing and mailing required notices to parties.

Mr. Kardash assists the Executive Officer and the Hearings Officer with scheduling hearing dates and times. Additionally, Mr. Kardash maintains a record of open action items of cases that need to be acted on. Mr. Kardash is also responsible for maintaining and updating the Board's website, including its library of Board Orders and Decisions, laws, rules, and other public information. In addition to the website, Mr. Kardash is tasked with collecting and maintaining information on the cases, including the number, type, and status. Finally, Mr. Kardash also performs research and builds systems for the Board as required.

Previously, Mr. Kardash gained more than ten years of legal experience at a prominent labor law firm in Hawai‘i. Mr. Kardash graduated from Kamehameha Schools and Northwestern University with a Bachelor of Arts in Music Performance: Piano. After obtaining his Bachelor’s degree, Mr. Kardash received a Master of Library and Information Science from the University of Hawai‘i at Mānoa.

#### IV. DATA ON THE PUBLIC SECTOR BARGAINING UNITS

The collective bargaining law for public employees divides all State and County employees covered by Chapter 89, HRS, into 14 units based upon occupational and compensation plan groupings. These bargaining units, described in HRS § 89-6(a), are as follows:

Unit	Statutory Description
1	Non-supervisory employees in blue collar positions;
2	Supervisory employees in blue collar positions;
3	Non-supervisory employees in white collar positions;
4	Supervisory employees in white collar positions;
5	Teachers and other personnel of the department of education under the same pay schedule, including part-time employees working less than twenty hours a week who are equal to one-half of a full-time equivalent;
6	Educational officers and other personnel of the department of education under the same pay schedule;
7	Faculty of the University of Hawai‘i and the community college system;
8	Personnel of the University of Hawai‘i and the community college system, other than faculty;
9	Registered professional nurses;
10	Institutional, health and correctional workers;
11	Firefighters;
12	Police officers;
13	Professional and scientific employees, who cannot be included in any of the other bargaining units; and
14	State law enforcement officers and state and county ocean safety and water safety officers.

It is customary to refer to the bargaining units by the numbers used in HRS § 89-6(a). For example, the unit consisting of firefighters is referred to as Unit 11.

**A. Exclusive Representatives**

All 14 public employee collective bargaining units have selected these six (6) employee organizations to serve as their exclusive representatives. Throughout the remainder of this report, the following abbreviations will be used to refer to the respective exclusive representatives (or unions):

HFFA           Hawai‘i Fire Fighters Association, Local 1463, IAFF, AFL-CIO  
HGEA           Hawai‘i Government Employees Association, AFSCME, Local 152, AFL-CIO  
HSTA           Hawai‘i State Teachers Association  
SHOPO         State of Hawai‘i Organization of Police Officers  
UHPA           University of Hawai‘i Professional Assembly  
UPW            United Public Workers, AFSCME, Local 646, AFL-CIO

**B. Number of Employees in Bargaining Units**

<b>Unit</b>	<b>No. of Employees</b>	<b>Difference From Previous Year</b>	<b>Exclusive Representative</b>	<b>Date of Initial Certification</b>
1	8,375	(104)	UPW	10/20/1971
2	779	(10)	HGEA	10/20/1971
3	13,055	(418)	HGEA	4/3/1972
4	844	3	HGEA	5/3/1972
5	12,638	(98)	HSTA	05/21//71
6	880	25	HGEA	6/10/1971
7	3,804	(116)	UHPA	11/1/1974
8	2,334	(6)	HGEA	1/26/1973
9	1,700	140	HGEA	7/10/1979
10	3,094	93	UPW	2/11/1972
11	1,977	52	HFFA	2/4/1972
12	2,894	(23)	SHOPO	7/14/1972
13	8,143	33	HGEA	5/3/1972
14	212	60	HGEA	7/1/2013

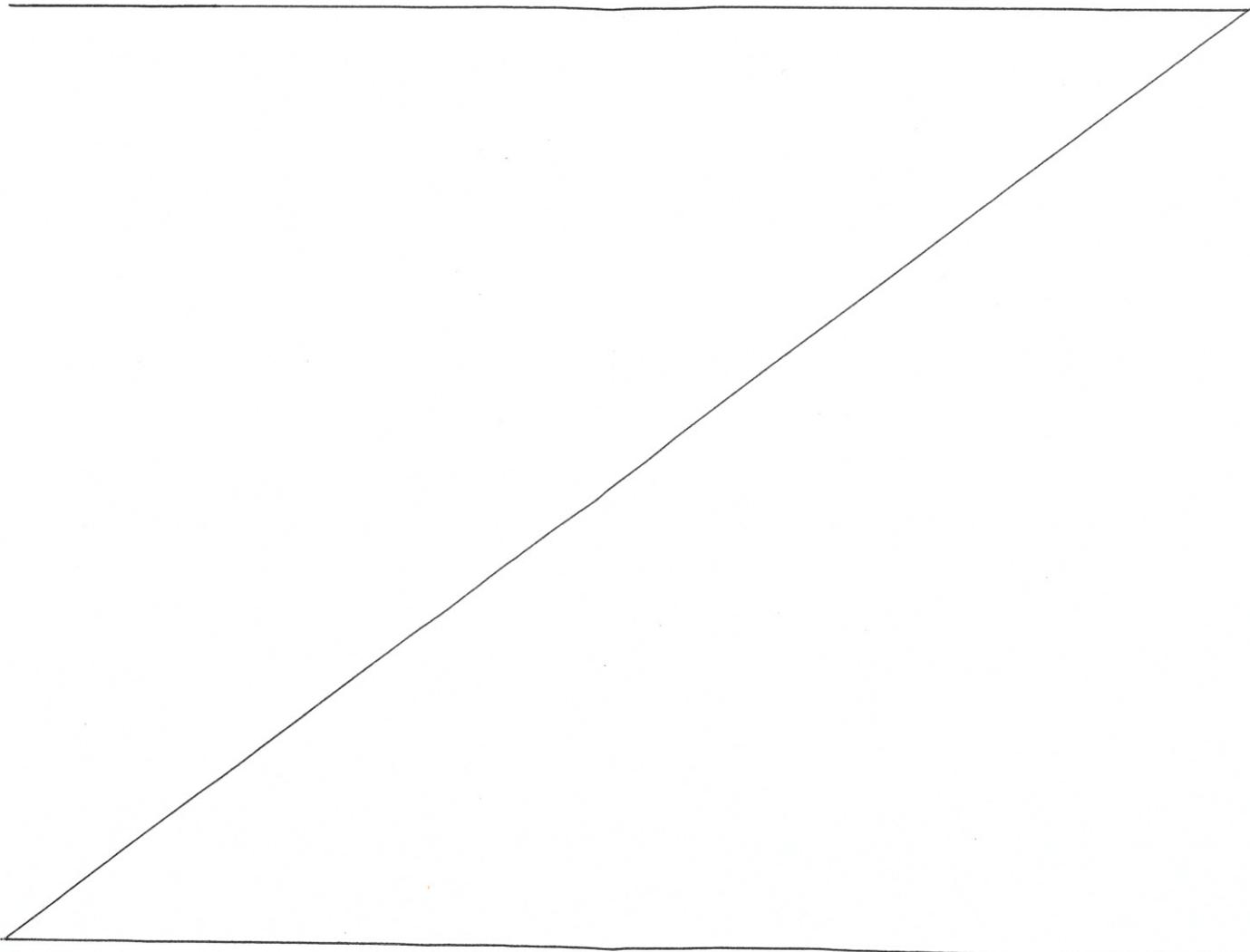
There are approximately 60,729 public employees in bargaining units as shown in the chart above. The above chart also indicates the number of employees in each bargaining unit, the union and the date

that the union was initially selected and certified as the exclusive representative.

The chart below indicates the number of Unit 14 employees by employing jurisdiction. It is anticipated that a more accurate number of Unit 14 employees will be reported in the next HLRB Informational Bulletin.

Unit	State of Hawai'i	C & C	Hawai'i County	Maui County	Kaua'i County	DOE	Jud.	UH	HHSC	TOTAL
14	0	170	0	0	42	0	0	0	0	212

*The information in the above two charts are from HLRB Informational Bulletin No.57, dated March 15,2019,and can be found on the Board's Web site <http://labor.hawaii.gov/hlrb/find-a-report/>.*



**C. Chapters 89/377  
Backlog and Old Cases  
Fiscal Year 2017/18 (July 1, 2017 to June 30, 2018)**

<b>Type of Case</b>	<b>Backlog</b> <i>(prior to 6/30/15)</i>	<b>Old Cases</b> <i>(between 7/1/15 and 6/30/17)</i>	<b>Backlog Closed in FY18</b>	<b>Old Cases Closed in FY18</b>
<b>CHAPTER 377</b>				
Unfair Labor Practice Against Union - (CU)	0	0	0	0
Unfair Labor Practice Against Employer - (CE)	0	0	0	0
<b>CHAPTER 89</b>				
Prohibited Practice Against Employer – CE	48	8	11	6
Prohibited Practice Against Union – CU	6	6	2	1
Prohibited Practice Against Employee - CEE	0	0	0	0
Impasse – I	0	14	0	14
Declaratory Ruling - DR	1	2	0	1
Unit Clarification – RA	0	2	0	2
<b>TOTAL 89/377 CASES</b>	<b>55</b>	<b>32</b>	<b>13</b>	<b>24</b>

**Chapters 89/377**  
**New Cases**  
**Fiscal Year 2017/18 (July 1, 2017 to June 30, 2018)**

<b>Type of Case</b>	<b>New Cases (Cases Opened in FY18)</b>	<b>New Cases Closed in FY18</b>	<b>Pending New Cases End of FY18</b>
<b>CHAPTER 377</b>			
Unfair Labor Practice Against Union - (CU)	0	0	<b>0</b>
Unfair Labor Practice Against Employer - (CE)	2	2	<b>0</b>
<b>CHAPTER 89</b>			
Prohibited Practice Against Employer – CE	20	4	<b>16</b>
Prohibited Practice Against Union – CU	11	5	<b>6</b>
Prohibited Practice Against Employee - CEE	0	0	<b>0</b>
Impasse – I	1	0	<b>1</b>
Declaratory Ruling - DR	4	0	<b>4</b>
Unit Clarification – RA	0	0	<b>0</b>
<b>TOTAL 89/377 CASES</b>	<b>38</b>	<b>11</b>	<b>27</b>

**Chapters 89/377**  
**Backlog and Old Cases**  
**Fiscal Year 2018/19 (July 1, 2018 to June 30, 2019)**

<b>Type of Case</b>	<b>Backlog</b> <i>(prior to 6/30/15)</i>	<b>Old Cases</b> <i>(between 7/1/15 and 6/30/18)</i>	<b>Backlog Closed in FY19</b>	<b>Old Cases Closed in FY19</b>
<b>CHAPTER 377</b>				
Unfair Labor Practice Against Union - (CU)	0	0	0	0
Unfair Labor Practice Against Employer - (CE)	0	0	0	0
<b>CHAPTER 89</b>				
Prohibited Practice Against Employer – CE	37	18	17	8
Prohibited Practice Against Union – CU	4	12	0	1
Prohibited Practice Against Employee - CEE	0	0	0	0
Impasse – I	0	1	0	0
Declaratory Ruling - DR	1	4	0	4
Unit Clarification – RA	0	0	0	0
<b>TOTAL 89/377 CASES</b>	<b>42</b>	<b>35</b>	<b>17</b>	<b>13</b>

**Chapters 89/377**  
**New Cases**  
**Fiscal Year 2018/19 (July 1, 2018 to June 30, 2019)**

<b>Type of Case</b>	<b>New Cases (Cases Opened in FY18)</b>	<b>New Cases Closed in FY19</b>	<b>Pending New Cases End of FY19</b>
<b>CHAPTER 377</b>			
Unfair Labor Practice Against Union - (CU)	1	0	<b>1</b>
Unfair Labor Practice Against Employer - (CE)	13	0	<b>13</b>
<b>CHAPTER 89</b>			
Prohibited Practice Against Employer – CE	30	2	<b>28</b>
Prohibited Practice Against Union – CU	18	5	<b>13</b>
Prohibited Practice Against Employee - CEE	0	0	<b>0</b>
Impasse – I	7	0	<b>7</b>
Declaratory Ruling - DR	0	0	<b>0</b>
Unit Clarification – RA	0	0	<b>0</b>
<b>TOTAL 89/377 CASES</b>	<b>69</b>	<b>7</b>	<b>62</b>

**Chapters 89/377**  
**Backlog and Old Cases**  
**Fiscal Year 2019/20 (July 1, 2019 to June 30, 2020)**

<b>Type of Case</b>	<b>Backlog</b> <i>(prior to 6/30/15)</i>	<b>Old Cases</b> <i>(between 7/1/15 and 6/30/19)</i>	<b>Backlog Closed in FY20</b>	<b>Old Cases Closed in FY20</b>
<b>CHAPTER 377</b>				
Unfair Labor Practice Against Union - (CU)	0	1	0	0
Unfair Labor Practice Against Employer - (CE)	0	13	0	0
<b>CHAPTER 89</b>				
Prohibited Practice Against Employer – CE	20	38	6	8
Prohibited Practice Against Union – CU	4	24	0	5
Prohibited Practice Against Employee - CEE	0	0	0	0
Impasse – I	0	8	0	0
Declaratory Ruling - DR	1	0	0	0
Unit Clarification – RA	0	0	0	0
<b>TOTAL 89/377 CASES</b>	<b>25</b>	<b>84</b>	<b>6</b>	<b>13</b>

**Chapters 89/377**  
**New Cases**  
**Fiscal Year 2019/20 (July 1, 2019 to June 30, 2020)**

<b>Type of Case</b>	<b>New Cases (Cases Opened in FY20)</b>	<b>New Cases Closed in FY20</b>	<b>Pending New Cases End of FY20</b>
<b>CHAPTER 377</b>			
Unfair Labor Practice Against Union - (CU)	0	0	<b>0</b>
Unfair Labor Practice Against Employer - (CE)	1	0	<b>1</b>
<b>CHAPTER 89</b>			
Prohibited Practice Against Employer – CE	35	7	<b>26</b>
Prohibited Practice Against Union – CU	13	4	<b>9</b>
Prohibited Practice Against Employee - CEE	0	0	<b>0</b>
Impasse – I	0	0	<b>0</b>
Declaratory Ruling - DR	0	0	<b>0</b>
Unit Clarification – RA	1	0	<b>1</b>
<b>MISCELLANEOUS</b>			
<b>TOTAL 89/377 CASES</b>	<b>50</b>	<b>11</b>	<b>37</b>

**D. Chapter 396 (HIOSH)**  
**Backlog and Old Cases**  
**Fiscal Year 2018/19 (July 1, 2018 to June 30, 2019)**

Type of Case	Backlog <i>(prior to 6/30/15)</i>	Old Cases <i>(between 7/1/15 and 6/30/18)</i>	Backlog Closed in FY19	Old Cases Closed in FY19
<b>CHAPTER 396 (HIOSH)</b>				
Contested Citation	1	14	1	9
Discrimination	0	0	0	0
<b>TOTAL 396 (HIOSH) CASES</b>	<b>1</b>	<b>14</b>	<b>1</b>	<b>9</b>

**Chapter 396 (HIOSH)**  
**New Cases**  
**Fiscal Year 2018/19 (July 1, 2018 to June 30, 2019)**

Type of Case	New Cases <i>(Cases Opened in FY18)</i>	New Cases Closed in FY19	Pending New Cases End of FY19
<b>CHAPTER 396 (HIOSH)</b>			
Contested Citation	33	17	<b>16</b>
Discrimination	3	0	<b>3</b>
<b>TOTAL 396 (HIOSH) CASES</b>	<b>36</b>	<b>17</b>	<b>19</b>

Chapter 396 (HIOSH)  
 Backlog and Old Cases  
 Fiscal Year 2019/20 (July 1, 2019 to June 30, 2020)

Type of Case	Backlog <i>(prior to 6/30/15)</i>	Old Cases <i>(between 7/1/15 and 6/30/19)</i>	Backlog Closed in FY20	Old Cases Closed in FY20
<b>CHAPTER 396 (HIOSH)</b>				
Contested Citation	0	16	0	16
Discrimination	0	3	0	0
Miscellaneous	0	0	0	0
<b>TOTAL 396 (HIOSH) CASES</b>	<b>0</b>	<b>19</b>	<b>0</b>	<b>16</b>

**Chapter 396 (HIOSH)**  
**New Cases**  
**Fiscal Year 2019/20 (July 1, 2019 to June 30, 2020)**

<b>Type of Case</b>	<b>New Cases (Cases Opened in FY20)</b>	<b>New Cases Closed in FY20</b>	<b>Pending New Cases End of FY20</b>
<b>CHAPTER 396 (HIOSH)</b>			
Contested Citation	23	12	<b>11</b>
Discrimination	2	0	<b>0</b>
Miscellaneous	0	0	<b>0</b>
<b>TOTAL 396 (HIOSH) CASES</b>	<b>25</b>	<b>23</b>	<b>11</b>

## E. Chapters 89/377 Cases by Unions As Complainants and Respondents by Fiscal Year

FY18	HGEA	UPW	HSTA	UHPA	SHOPO	HFFA	SRL*	Atty for Comp	Employer	TOTAL CASES FILED
<b>Complainants</b>	<b>7</b>	<b>1</b>	<b>0</b>	<b>4</b>	<b>3</b>	<b>1</b>	<b>17</b>	<b>2</b>	<b>1</b>	<b>36</b>
<b>% Complainants</b>	<b>19%</b>	<b>3%</b>	<b>0%</b>	<b>11%</b>	<b>8%</b>	<b>3%</b>	<b>47%</b>	<b>6%</b>	<b>3%</b>	<b>100%</b>
<b>Respondents</b>	<b>4</b> <b>1</b> Intervenor	<b>5</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>--</b>	<b>24</b>	<b>36</b>
<b>% Respondents</b>	<b>14%</b>	<b>14%</b>	<b>3%</b>	<b>3%</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>		<b>67%</b>	<b>100%</b>

Unions as Complainants      16      44%

Unions as Respondents      12      33%

FY19	HGEA	UPW	HSTA	UHPA	SHOPO	HFFA	SRL*	Atty for Comp	Employer	TOTAL CASES FILED
<b>Complainants</b>	<b>22</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>28</b>	<b>1</b>	<b>1</b>	<b>55</b>
<b>% Complainants</b>	<b>40%</b>	<b>2%</b>	<b>0%</b>	<b>2%</b>	<b>2%</b>	<b>0%</b>	<b>51%</b>	<b>2%</b>	<b>2%</b>	<b>100%</b>
<b>Respondents</b>	<b>14</b>	<b>2</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>--</b>	<b>37</b>	<b>55</b>
<b>% Respondents</b>	<b>25%</b>	<b>4%</b>	<b>0%</b>	<b>2%</b>	<b>0%</b>	<b>2%</b>	<b>0%</b>		<b>67%</b>	<b>100%</b>

Unions as Complainants      25      45%

Unions as Respondents      18      33%

\*Self-Represented Litigants (SRLs), also known as pro se litigants are persons that appear before the Board on their own behalf without an attorney. Both Chapters 89/377 do not require an attorney to represent a person and any person may represent him or herself or designate a representative.

FY20	HGEA	UPW	HSTA	UHPA	SHOPO	HFFA	SRL*	Atty for Comp	Employer	TOTAL CASES FILED
<b>Complainants</b>	<b>25</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>18</b>	<b>4</b>	<b>0</b>	<b>48</b>
<b>% Complainants</b>	<b>52%</b>	<b>0%</b>	<b>2%</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>	<b>38%</b>	<b>8%</b>	<b>0%</b>	<b>100%</b>
<b>Respondents</b>	<b>5</b>	<b>6</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>--</b>	<b>35</b>	<b>48</b>
<b>% Respondents</b>	<b>10%</b>	<b>13%</b>	<b>2%</b>	<b>2%</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>		<b>73%</b>	<b>100%</b>

Unions as Complainants 26 54%

Unions as Respondents 13 27%

\*Self-Represented Litigants (SRLs), also known as pro se litigants are persons that appear before the Board on their own behalf without an attorney. Both Chapters 89/377 do not require an attorney to represent a person and any person may represent him or herself or designate a representative.

## V. PUBLICATIONS

HLRB Informational Bulletin: This annual bulletin issued by the Hawai‘i Labor Relations Board provides by employing jurisdictions, the number of public employees included in each of the 14 collective bargaining units established by Hawai‘i Revised Statutes § 89-6(a). The bulletin is published in the Spring and posted on the Board’s Website in the Find a Report section.

Website: Rules, forms, bulletins, recent decisions of the Board, and the Board’s List of Arbitrators with their resumes and fees are posted on the Hawai‘i Labor Relations Board section of the DLIR website at [www.hawaii.gov/labor](http://www.hawaii.gov/labor).

## VI. BOARD INITIATIVES FOR FY 2020-2021

### A. Revision of the Board Rules

The Board is currently in the process of changing its administrative rules, which were last revised in 1981. Since that time, much has happened: (i) the Board has expanded its responsibilities to adjudicate HIOSH cases under Chapter 396 of the Hawai‘i Revised Statutes; (ii) the Board is responsible for administering the “card-check program”; (iii) in 1985, the Legislature abolished HERB, transferred its functions to HPERB, and renamed it the Hawai‘i Labor Relations Board, effective January 1, 1986, to administer the provisions of both HRS Chapters 89 and 377; and (iv) the Board has proceeded to use electronic means to serve complaints, hearing notices and other document files.

The Board has already received comments and suggested changes from two divisions (Employment Law Division and Labor Division) within the Department of the Attorney General that regularly appear before the Board. We anticipate proceeding toward Statewide public hearings and adoption of amended rules in 2021.<sup>16</sup>

### B. Constantly Improving Chapters 89/377 and 396 Cases Processes

The Board continues to review and make changes to its pre-hearing and pre-trial processes for Chapters 89/377 and 396 cases.

For the Chapters 89/377 cases, the Board has been holding prehearing conferences as a matter of course, clarifying the issues, attempting to reach an agreement among the parties regarding undisputed facts and procedures, which will facilitate the expediting of the hearing or adjudication of issues, and establishing deadlines and prehearing procedures. The Board also schedules a pre-trial conference to discuss and identify anticipated witnesses, proposed exhibits, evidentiary issues, stipulations, and pre-trial motions. The Board has found these processes to be more conducive to resolving disputes prior to a full hearing on the merits, and for cases that do proceed to a hearing, the Board is better able to hear and decide said cases within a shorter timeframe.

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<sup>16</sup> In March, the Board was very fortunate to welcome Ms. Joyce K. Matsumoto-Hoshijo to the Board as Staff Attorney. Since then she has been the designated staff working on finalizing the Board’s draft to take to public hearing and adoption. In addition to her impressive legal background, with court clerkships, and appellate work at the Office of the Public Defender, her recent work on the Hawaii Paroling Authority administrative rules serves the Board and public well.

For the Chapter 396 cases, the Board has revised its prehearing conferences and procedures. Under the Board's new procedures, upon receipt of the transmittal of notice of contest from HIOSH, the Board issues to the parties a notice of case assignment and order, allowing the parties seventy-five (75) days to identify the contested issues, to conduct any necessary discovery, and to engage in settlement negotiations before committing, if necessary, to pretrial deadlines and trial dates assigned by the Board. By this procedure, the parties avoid the prior common practice of filing multiple requests for continuances in the prehearing process. The Board's goal is to work with the parties in resolving HIOSH cases as efficiently and successfully as possible, all while protecting the safety of the workers in the workplace. The Board has received positive comments regarding these new procedures and, most important, the parties that appear before the Board in Chapter 396 cases have engaged in positive and continuing discussions with us to further improve these procedures.

### **C. E-Filing (FSX) and Free Recording Services for All Hearings**

As reported in the previous Annual Reports, it was the Board's intent to address the backlog of cases by pursuing, among other things, the development of a comprehensive e-Filing system to include both Chapters 89/377 and Chapter 396 cases.

In early 2014, the Board contracted with *File and ServeXpress (FSX)* to provide e-Filing services on *FSX's* website, which services include online filing of pleadings and case related correspondence, and service of pleadings and correspondence by email, and storage of all case files. The current voluntary e-Filing service allows all participating parties to file and serve their documents on the opposing party "24/7." Like the Hawai'i Supreme Court, the Board accepts digital signatures on documents filed with the Board. Because of online filing and digital signatures, the Board's "paperless" process results in savings on paper and reproduction, binding, delivery services and postage, and labor costs, which benefits the State, the Board, and the parties.

Through the diligent efforts of the Board's staff and the cooperation of the various government and private law offices that practice before the Board, e-Filing through *FSX* has now been adopted by 99% of the government attorneys that appear before the Board and many new private-sector law firms and Self-Represented Litigants. Web Based Technology to Record and Store Board Proceedings

The Board continues recoding, storing, and retrieving the audio and video proceedings of its hearings by contracting with an Internet vendor (*FreeConferenceCall*) which has proven to provide good multi-vocal audio recordings and quick and easy filing and retrieval of all Board proceedings, all at a nominal month-to-month service charge. Parties can also access the recordings within minutes of its filing and access is through any internet connected platform, even a mobile phone. Using off-the-shelf video cameras, the Board can project real-time images to remote viewers of its proceedings and in tandem with the audio broadcasting and recording service be accommodating to Neighbor Island parties and provide real-time remote viewing and participation. This means the parties, and/or their attorneys, may attend Board proceedings without physical attendance and save in personal attendance, travel, and parking expense.

Finally, and most recently, the Board has established a *Zoom* account and protocol for remote hearings to accommodate Neighbor Islanders, At-Risk parties, including parties' attorneys, and its Board and Staff members.

#### **D. Labor Arbitration and Mediation Program**

The Board is continuously reviewing its method of overseeing the list of labor arbitrators and mediators as required by HRS § 89-5(i)(6) and (7). Annual submissions of updated resumes and any address changes are required by the Board. With the updated resumes and fee schedule, the parties selecting an arbitrator/mediator will be better equipped to make informed decisions and choices. The Board has also established a policy of requiring both parties' written assent to request and receive a list of five (5) Arbitrators after the initial list is issued by the Board. Likewise, the same is required for a replacement Arbitrator due to unavailability due to death, retirement, or for cause.<sup>17</sup>

#### **E. Changes to the Board's Website: A Resource for the Public and Practitioners**

The Board is continually working on updating its Website. The following are improvements were made recently.

- Since its inception the Board has rendered over 400 decisions and over 3,000 orders in Chapter 89 & 377 cases, and over 100 decisions and over 1,000 orders in Chapter 396, HIOSH cases.
- The Board has electronically archived most of the Chapter 89 Decisions and Orders from 1974 through 2001 and 2012 to the current fiscal year.
- The HLRB's HIOSH Decisions and Orders are available to the public and most are text searchable. Most *Google* searches will show contents of the cataloged pdfs. The list of all 89 Orders is current as of June 20, 2020.
- The Board and its Staff are working on a topical index for all its Decisions and Orders. This should be a helpful tool for both students, researchers, and practitioners alike, as private subscription services are no longer providing this service.
- The Board is updating its Frequently Asked Questions ("FAQ") to provide more information to Self-Represented Litigants. The Board is also examining the use of video to provide instruction and information to the public.
- The continues to examine the use of video to provide instruction and information to the public on the law and proceedings of the Board. Recent use of *Zoom* and other social media platforms may provide means of greater public participation and education.

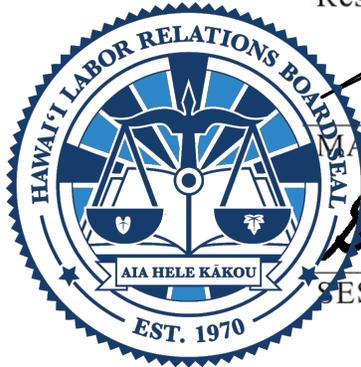
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<sup>17</sup> As of June 30, 2020, the Board has a listing of 40 persons listed as Arbitrators and Mediators. Included are several retired circuit court judges and a supreme court justice.

**VII. CONCLUSION**

In its previous report the Board highlighted its attention and work to address the Backlog cases while maintaining the timeliness of processing additional cases, as well as conducting hearings on the merits and substantive motions. In achieving those important goals, the Board has judiciously deployed its resources and achieved measurable results. The Board will continue striving to maintain those standards and meet those benchmarks during these extraordinary times and will do so with adherence and fidelity to the legislative policies established under Chapters 89, 377, and 396.

Respectfully submitted,



*Marcus R. Oshiro*

MARCUS R. OSHIRO, Chairperson

*Sesnita A. D. Moepono*

SESNITA A.D. MOEPONO, Board Member

*J.N. Musto*

J.N. MUSTO, Board Member